

Section III

**AMENDMENT UNDER 37 CFR §1.121 to the
DRAWINGS**

No amendments or changes to the Drawings are proposed.

Section IV
AMENDMENT UNDER 37 CFR §1.121
REMARKS

Summaries of the Interviews

We are disappointed that the Examiner was unable to allow the claims pursuant to the agreement to the Examiner's proposed amendment of July 15, 2008, which was proposed by the Examiner to make the claims allowable. However, we understand, but do not agree with, the Examiner's position regarding the maintained rejection under 35 U.S.C. §112, first paragraph. We believe the amendment made herein should overcome any rejections under 35 U.S.C. §112, first paragraph.

Rejections Under 35 U.S.C. §112, First Paragraph

Amendment. We have implemented the Examiner's proposed amendment in the present amendment. Per the Examiner's recommendation, these additional recitations place the claims in condition for allowance except for the previously-existing issues which are the subject of the rejections under 35 U.S.C. §112.

We are presently deleting the claim recitations to which the rejections under 35 U.S.C. §112 are directed, but retaining the additional elements proposed by the Examiner as patentably distinct. We believe this places the claims in a condition for allowance, and removes all issues under 35 U.S.C. §112.

In particular, we have rephrased the broader search step as follows:

*automatically executing a broader search using keywords related to
said displayed objects of interest, said broader search being
executed continuously or periodically;*

which corresponds closely with our description at paragraph 0059 (as published).

We have also rephrased the step of displaying the broader search results initially in a non-prominent manner (compared to the Context and Content panes), and upon user command, in a prominent manner, as follows:

displaying results of said broader search to said user in form less prominent than said Context Pane and said Content Portion the display, said less prominent display being selected from a group comprising a minimized tab, a minimized pane, and an expandable pop-up box; and
responsive to user command, sorting said broad search results according to said user's interest as indicated by a most recent selection and prominently displaying said broad search results in manner equally conspicuous with said aggregation action results, said prominent display of broad search results being selected from a group comprising maximizing a workspace, maximizing a frame, and expanding a pop-up box.

We believe these steps correspond well with our disclosure at paragraphs 0034 (prominence of different display areas), 0059 (initial conspicuousness of broad search results), 0073-0074 (minimized, maximizable workspaces), and 0085 (pop-up boxes, action module frames). We believe that those ordinarily skilled in the art would understand we were in possession of this invention, especially in view of our illustrations of these displays (frames, workspaces, and pop-up boxes), and especially in view of the conventional definitions of *prominence* and *conspicuousness*:

prominence *adj.*

1. Jutting out or protruding from a surface; projecting, protuberant.
...
2. a. That stands out so as to catch the attention; notable; distinguished above others of the same kind; (of a person) well-known, important.
...
- b. That catches the eye; conspicuous.
...

conspicuous *adj.*

1. Clearly visible, easy to be seen, obvious or striking to the eye.

...

2. a. Obvious to the mental eye, plainly evident; attracting notice or attention, striking; hence, eminent, remarkable, noteworthy.

...

(Source: *Oxford English Dictionary*, retrieved on 12/2/2008 from <http://www.oed.com>)

For these reasons, we respectfully request allowance of Claims 16 - 26.

Request for Reconsideration and Explicit Determination of Ordinary Skill Level. In a rejection under 5 U.S.C. §112, first paragraph, a key factor is the ordinary skill level in the art at the time of the invention. It is necessary to know this skill level in order to determine if a disclosure would or would not properly convey possession of the invention by the inventor.

In the first and second Office Actions on the merits, rejections under 35 U.S.C. §103(a) were made, which presumably required an establishment of the ordinary skill level in the art at the time of our invention. However, no explicit determination was included in those Office Actions.

We believe that the present rejections under 35 U.S.C. §112, first paragraph, may be applying a much lower presumed ordinary skill level than was being presumed for support of the previous rejections under 35 U.S.C. §103(a) because the proposed combinations and modifications of the previous rejections under 35 U.S.C. §103(a) appeared to require considerable knowledge and skill.

We respectfully submit that it would be fundamentally unfair and inequitable to hold a high level of ordinary skill in order to support a rejection under 35 U.S.C. §103(a), yet apply a lower level of ordinary skill level to support a rejection under 35 U.S.C. §112, first paragraph.

For this reason, we respectfully request an explicit determination by the Examiner of the ordinary skill level in the art at the time of the invention. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17 - 18 ("Graham") included resolving the ordinary skill level as a required element of establishing a *prima facie* case of obviousness. More recently, *KSR Int'l v. Teleflex Inc., et al.*, (U.S. Supreme Court, April 30, 2007) clarified and emphasized that such resolution of the ordinary skill level at the time of an invention should be made through explicit analysis:

"... To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art. **To facilitate review, this analysis should be made explicit** . . . "

We respectfully request an explicit determination from the Examiner of what is being held as the ordinary skill level for the purposes of the rejections under 35 U.S.C. §112, first paragraph.

Request for Indication of Allowable Subject Matter

We believe we have responded to all grounds of rejection, but if the Examiner disagrees, we would appreciate the opportunity to supplement our reply.

We believe the present amendment places the claims in condition for allowance. If, for any reason, it is believed that the claims are not in a condition for allowance, we respectfully request constructive recommendations per MPEP 707.07(j) II which would place the claims in condition for allowance without need for further proceedings. We will respond promptly to any Examiner-initiated interviews or to consider any proposed examiner amendments.

Respectfully,

/ Robert Frantz /

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